
(1998) 08 PAT CK 0068
In the Patna High Court
Case No : C.W.J.C. No. 3100 of 1995 (R)

Hindalco Industries Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-1998

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (1998) 3 BLJR 2025

Hon'ble Judges : S.N. Jha, J;Aftab Alam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—Whether in order to qualify for the benefit of concessional rates of purchase in terms of Section 13(1)(b) of the Bihar Finance Act, 1981 ("the Act", hereinafter) the dealer, apart from satisfying the other conditions specified in the section, must also have the site of manufacture in which the purchased goods are to be used located within the State?

2. Or to say the same thing slightly differently; is it sufficient for the purpose of Section 13(1)(b) that the goods purchased at concessional rates are directly used in the manufacture of goods though for being used in the manufacture, the goods purchased in this State are transported out side the State where the manufacturing unit is sited? This is the question that arises for consideration in this writ petition.

3. The petitioner is a company registered under the Companies Act. It has its registered office at Bombay and a manufacturing unit at Renukoot in the State of U.P. where it is engaged in the manufacture of aluminium and allied products. It is stated on behalf of the petitioner that bauxite is one of the major raw materials required for manufacturing aluminium and the petitioner has got several mines within the State of Bihar in the districts of Lohardagga and Gumla from where it extracts bauxite and transports it to its manufacturing plant at

Renukoot, U.P. It is further stated on behalf of the petitioner that being engaged in mining activities it was covered by the definition of "dealer" within the meaning of the Act and was accordingly registered under the relevant provisions of the State Act and the Central Sales Tax Act. According to the petitioner's case the quantity of bauxite extracted from its own mines being insufficient to meet its manufacturing requirement. It was obliged to purchase bauxite from other mine owners for use as direct raw material for manufacture of aluminium at its plant. It accordingly applied for certificate for purchase of bauxite directly for use in the manufacture of aluminium at concessional rates. On an application made by it bauxite (for use in manufacture) was added on 24.10.1972 in the Certificate No. RN 178/6-A (1) (b), dated 9.6.1972 already issued in its favour for purchase of goods for use in mining on concessional rates. The aforesaid certificate was granted to the petitioner u/s 6-A of the Bihar Sales Tax Act, 1959, which was in force at that time.

4. It is asserted on behalf of the petitioner that since the grant of the certificate, it makes purchases of bauxite in this State at concessional rates, and the entire quantity of bauxite so purchased is transported to its plant at Renukoot for use as direct raw material in the manufacture of aluminium. It is also stated that as the petitioner is engaged in mining operations, it has another certificate separately issued u/s 13(1)(c) for purchase of goods required directly for use in mining. In this case, however, we are not concerned with its certificate u/s 13(1) (c) and what we are concerned with is the dispute concerning the certificate u/s 13(1)(b) issued in its favour.

5. According to the case of the petitioner the certificate issued in its favour for purchase of bauxite was duly renewed from year to year. In the meanwhile, the Bihar Sales Tax Act, 1959 was replaced by Ordinances and finally, with effect from 1.4.1981, by the Bihar Finance Act, 1981. Later, in the year, 1986, Lohardagga circle came into existence following which the newly created circle issued in the petitioner's favour Certificate No. LD-7/13(1)(v) u/s 13(1)(b) of the Act. This certificate too like the previous one was renewed from year to year till the petitioner was informed by the Assistant Commissioner, Commercial Taxes, Lohardagga circle by letter No. 9. dated 3.4.1992 (Annexure-3) that as the petitioner was connected with mining operations only the certificate granted u/s 13(1)(b) of the Act for purchase of raw materials at concessional rates for use in manufacture was not proper and the certificate was accordingly being cancelled with effect from the date of the letter. The cancellation of the certificate was made without giving the petitioner an opportunity of hearing. The petitioner accordingly made an application for review u/s 47 of the Act. The Assistant Commissioner, Commercial Taxes then passed an order, dated 25.6.1992 (Annexure-5) recalling the order of cancellation and restoring the petitioner's certificate u/s 13(1)(b).

6. The matter, however, did come to an end at that stage and later on the Assistant Commissioner, Commercial Taxes once again called the petitioner to

show cause why the certificate issued in its favour u/s 13(1)(b) of the Act be not cancelled on the ground that no manufacturing operations were carried on by it in this stage. The petitioner appeared in response to the notice and after hearing its representative the Assistant Commissioner by the order, dated 29.9.1995 (Annexure-10) finally revoked the certificate issued in its favour u/s 13(1)(b) of the Act. The Assistant Commissioner passed this order purportedly in exercise of the power of review as provided u/s 47 of the Act. It is this order which comes under challenge in this writ petition.

7. Mr. K.N. Jain, learned senior counsel appearing for the petitioner submitted that the impugned order, apart from taking an erroneous view of the requirements of Section 13(1)(b) was without jurisdiction. According to Mr. Jain the provision of review u/s 47 of the Act did not empower the Assistant Commissioner to cancel or recall a certificate earlier issued in the petitioner's favour u/s 13(1)(b) of the Act.

8. I have heard the parties at length on the merits of the case, that is, the requirements of Section 13(1)(b) of the Act. This is the issue that goes to the root of this controversy. In that view I propose to examine in this judgment the requirements of Section 13(1)(b) and I see no need to go into the question whether the impugned order was passed in valid exercise of power u/s 47 of the Act.

9. According to the impugned order the petitioner was neither recorded under the provisions of the Act, particularly u/s 14, as a dealer engaged in manufacture of any goods nor did it in fact have any manufacturing unit in this State. It was further found in the order that in this State the commercial activities of the petitioner were confined only to mining operations and sale and purchase of bauxite and it had its manufacturing unit at Renukoot in the State of U.P. On these findings (which the petitioner does not even try to deny) the Assistant Commissioner came to hold that the petitioner was not entitled to the benefits of purchase of bauxite at concessional rate in this State as provided u/s 13(1)(b) of the Act. The order is clearly based on the notion that the condition of manufacture of goods as envisaged u/s 13(1)(b) has a further implicit condition that the manufacture of goods must take place in this State and not at any place outside the State. The question to be examined in this case is regarding the correctness of the implied condition.

10. However, before adverting to the main question it would be appropriate to dispose of a point raised by Mr. M.S. Anwar, learned Government Pleader No. I appearing on behalf of the State. Relying upon some passages in the impugned order and certain averments made in the counter affidavit filed on behalf of the respondents, Mr. Anwar submitted that the petitioner was not described as manufacturer of goods in the certificate of registration as a dealer u/s 14 of the Act and it was, therefore, not entitled to the grant of certificate u/s 13(1)(b) of the Act. It was not stated that the petitioner was not a manufacturer of goods at all and did not carry on any manufacturing activity anywhere. All that was said

that in the registration certificate u/s 14 of the Act it was not described as manufacturer of goods. The objection is unfounded both on facts and in law. On facts Mr. Anwar invited our attention to certain columns in the certificate which were left blank by the official issuing the certificate in order to contend that the petitioner was not described as a manufacturer of goods. He, however, overlooked the fact that at other columns in the same certificate it was stated that the petitioner had an aluminium plant at Renukoot and that bauxite raised in Bihar was despatched to Renukoot for consumption at the plant. Moreover, it certain columns of the certificates were left blank by the issuing officials I fail to see how the petitioner can be held responsible for it. I am, therefore, of the opinion that it is incorrect to suggest that from the revenue records it did not appear that the petitioner was engaged in the manufacture of aluminium at Renukoot in UP.

11. Secondly, there is no legal sanction for the proposition that for issuance of the certificate u/s 13(1)(b) the dealer must be "described" as a manufacturer of goods in the certificate of registration u/s 14 of the Act. I, therefore, see no merit in the point raised by Mr. Anwar in support of the impugned order.

12. Now coming to the main question in this case we may begin by examining Section 13 of the Act. The relevant part of the section is as follows:

13. Special rate of tax on certain sales or purchases:(1) Notwithstanding anything contained in this part but subject to such conditions and restrictions as may be prescribed:

(a) omitted from 4th March, 1994.

(b) sales to or purchases by a registered dealer of goods required by him directly for use in the manufacture or processing of any goods for sale.

(c) sales of goods to a registered dealer required directly for use in mining or to a person, company or undertaking holding registration certificate under the Bihar Electricity Duty Act, 1948 (Bihar Act XXXVI of 1948) required directly for use in the generation of distribution of electricity; and

(d) sales of machineries, tools, plants and assessories thereof to a person, firm, company, corporation or concern intending to establish a business in Bihar for the purpose of manufacturing goods for sale and in whose case the likely sale proceeds of such manufactured goods is expected to exceed the quantum specified in Sub-section (1) of Section 3 or for mining or generation and distribution of electricity; and in respect of which the purchaser has been granted a certificate by the prescribed authority in the prescribed manner and for the prescribed period shall, unless the goods are taxable at a lower rate u/s 12 be subject to Sub-section (2), leviable to tax at such rate or rates as may be notified by the State Government in this behalf not exceeding 4 per centum;

Provided...

(2)...

(3)...

(4)...

(Emphasis added)

13. Mr. Jain submitted that Section 13(1)(b) envisages sales or purchase of goods directly for use in the manufacture of any goods for sale and on the plain language of the section, it would not be permissible to add any further condition concerning the situs of manufacture. In support of his submission, Mr. Jain relied upon a Supreme court decision in Polestar Electronic (Pvt.) Ltd. v. Addl. Commissioner, Sales Tax and Anr. (1978) 41 S.T.C. 409. In that case the Supreme Court examined Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, as applied to the Union Territory of Delhi. Section 5 (2) of the Bengal Finance Act defined taxable turnover and before its amendment with effect from 28.5.1972 the relevant portion of Section 5 (2) was as follows:

that part of a dealer's gross turnover during any period which remains after deducting therefrom:

(a) his turnover during that period on:

(i) the sale of goods declared tax-free u/s 6;

(ii) sale to a registered dealer:

of goods of the class or classes specified in the certificate of registration of such dealer as being intended for re-sale by him, or for use by him as raw materials in the manufacture of goods for sale; and

of containers of other materials for the packing of goods of the class or classes so specified for sale:

Provided that in the case of such sales a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars on a prescribed form obtainable from the prescribed authority is furnished in the prescribed manner by the dealer who sells the goods:

Provided further that where any goods specified in the certificate of registration are purchased by a registered dealer as being intended for re-sale by him or for use by him as raw materials in the manufacture of goods for sale, but are utilised by him for any other purpose, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer;

(iii)...

(iv)...

(v)...

(vi)...

(Emphasis added)

14. It is thus to be seen that Section 5(2) of the Bengal Act defined taxable turnover after allowing permissible deductions and one of the deductions allowed u/s 5 (2)(a)(ii) was on sale of goods to a registered dealer as being intended for re-sale by him or for use by him as raw materials in the manufacture of goods for sale. In substance, therefore, Section 5(2)(a)(ii) of the Bengal Act was quite similar to Section 13(1)(b) of the Bihar Act with the difference that while the Bengal Act permitted total deduction. From Taxable Turnover on such sales under the Bihar Act such sales qualify for concessional rates of purchase.

15. In Polestar Electronic (*supra*), a controversy arose like the present one and the sales tax authorities maintained that for the purpose of Section 5(2)(a)(ii) and the 2nd proviso, re-sale of the goods purchased meant re-sale inside Delhi and so also, use of the goods purchased as raw materials in the manufacture of goods and sale of manufactured goods were required to be inside Delhi and, therefore, if the assessee re-sold the goods outside Delhi or used them as raw materials in manufacture outside Delhi or even if the manufacture was inside Delhi, sold the goods manufactured outside Delhi, there was utilisation of the goods by the assessee for a purpose other than that for which they were purchased. The Delhi High Court in *Fitwell Engineers v. Finance Commissioner, Delhi Administration* (1975) 35 STC 66, upheld the view taken by the taxing authorities. In appeal before the Supreme Court the contention of the Revenue was that though the words "inside the Union Territory of Delhi" were not to be found in Section 5(2)(a)(ii). they must be read in that provision as a matter of construction. According to the Revenue if the provision was not so constructed the Union Territory of Delhi would lose tax altogether where goods were re-sold or used in manufacture outside Delhi. Several other reasons were also assigned in support of the contention. The decision began considering the contention of the Revenue by making the following observation on the principle of statutory interpretation:

Now if there is one principle of interpretation more well-settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statutes. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases. Crawford in his book on "Construction of Statutes" (1940 Ed.), at page 269, explains the rule in the following terms: "Where the statute's meaning is clear, and explicit, words cannot be interpolated. In the first place, in such a case they are not needed. If they should be interpolated, the statute would more than likely to fall to express the legislative intent, as the thought intended to be conveyed might be altered by the addition of new words. They should not be

interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted words, interpolation is improper, since the primary source of the legislative intent is in the language of the statute."

After referring to a number of authorities both foreign and of this country the decision came to reject the view advanced by the Revenue and held that resale within the meaning of Section 5(2)(a)(ii) was not confined to the Territory of Delhi but also included re-sale outside the Territory of Delhi. There was no geographical limitation confining re-sale", "manufacture" or sale" to the Territory of Delhi. In case of "manufacture" and "sale" it was held as follows:

"Similarly, for the same reasons, which we need not repeat again, "manufacture" and "scale" in Section 5(2)(a)(ii) and the second proviso mean manufacture and sale anywhere without any geographical/imitation and neither "manufacture" nor "sale" is restricted to the territory of Delhi. There are no words like "inside the Union Territory of Delhi" to qualify "manufacture" or "sale" and there is no cogent or compelling reason for reading such words in Section 5(2)(a)(ii) and the second proviso. The use of the goods purchased as raw materials in the manufacture of goods may, therefore, take place any where and not necessarily inside Delhi and equally the sale of the goods so manufactured may be effected anywhere, whether inside or outside Delhi. The only end-use of the goods purchased required to be made for attracting the applicability of Section 5(2)(a)(ii) is that the goods must be utilised by the purchasing dealer as raw materials in the manufacture of goods and the goods so manufactured must be sold, irrespective whether the manufacture or sale takes place inside Delhi or outside. If the purchasing dealer does not use the goods purchased as raw material in the manufacture of goods or having manufactured the goods does not sell them, he would commit a breach of the intention expressed by him in the declaration furnished to the selling dealer and the second proviso would immediately be attracted and the price of the goods purchased by him would be liable to be included in his taxable turnover. But so long as he carries out the intention expressed in the declaration and uses the goods purchased as raw materials in the manufacture of goods, whether inside or outside Delhi, and sells the goods so manufactured in Delhi or outside, he would not fall within the second proviso, and the sale to him would not be taxable in his hands.

(Emphasis added)

17. The Supreme Court decision in Polestar Electronic supports the submission made by Mr. Jain with full force.

18. Again in Assessing Authority-cum-Excise and Taxation Officer v, East India Cotton Manufacturing Company Limited (1981) 48 S.T.C. 239, the Supreme Court examined Section 8(3)(b) of the Central Sales Act which used the expression:

....purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf for use by him in the manufacture or processing of goods for sale or...

(Emphasis added).

19. The assessee company purchased goods from outside the State of Punjab for the purpose of use in manufacture of goods for sale but instead of doing so the assessee company used those goods partly in manufacturing its own goods for sale and partly for doing job work for other parties. The taxing authorities took the view that the assessee company could not use the material "concessionally purchased for the job work as that did not constitute "sale". The Supreme Court framed the question that arose for consideration in that case as follows:

The question which, therefore, arises for consideration is as to what is the scope and meaning of the expression "for use...in the manufacture...of goods for sale" occurring in Section 8(3)(b) and in the declaration in Form C and Rule 13. Does it mean that the goods manufactured by a registered dealer by using the goods purchased against his certificate of registration and the declaration in Form C must be intended for sale by him or does it also include a case where goods are manufactured by a registered dealer for a third party under a sub-contract and the manufactured goods are intended for sale by such third party.

The question was answered in the following manner:

We are, therefore, of the view that the Division Bench of the High Court was right in holding that even if the assessee carried out the work of sizing, bleaching and dyeing of textiles for a third party on job-contract, basis, its case would be covered by the terms of the second sub-clause of Section 8(3)(b), provided that the textiles so sized, bleached and dyed by the assessee were intended for sale by such third party.

20. The decision of the Supreme Court in East India Cotton Manufacturing Company Limited also supports the submission made on behalf of the petitioner.

21. Mr. Jain next invited our attention to some legislative changes in Section 13(1)(b) which also lend support to the submission made by him. Learned Counsel pointed out that when the Act came into force on 1.4.1981 the provision of Clause (b) of Sub-section (1) of Section 13 of the Act read as follows:

(b) Sales to or purchases by a registered dealer of goods required by him directly for use in the manufacture or processing of any goods for sale in Bihar or in course of inter-State trade or commerce.

(Emphasis added).

22. It may be noted that the Supreme Court decision in the case of Polestar Electronic had already come in 1978 and hence the legislature was fully conscious of the legal position when it added the restrictive words "for sale in Bihar or in course of inter-State trade or commerce." The law as came into force

with effect from 1.4.1981, thus, clearly provided that concessional rates of purchase would be available only on the condition that the manufactured goods would be sold in Bihar or in course of inter-State trade or commerce though the manufacture itself might take place outside Bihar.

23. Mr Jain then pointed out that by an amendment introduced with effect from 1.4.1985 the restrictive words in Section 13(1)(b) were deleted and from 1.4.1985 the provision of Section 13(1)(b) reads as follows:

(1)(b) Sales to or purchases by a registered dealer of goods required by him directly for use in the manufacture or processing of any goods for sale.

24. Mr. Jain submitted that from the nature of the amendment, the legislative intendment was clear and it was that no geographical limitation was to be placed on the situs of manufacture or sale of the manufactured goods.

25. The submission made on behalf of the petitioner is further supported from Section 13 itself. It is to be seen that where the legislature intended to impose any geographical restrictions, it said so in plain and unequivocal language. Thus Clause (d) of Sub-section (1) of Section 13 which deals with sales of machineries, tools etc. for setting up business of manufacture of goods clearly stipulates that the business of manufacture of goods is to be set up in Bihar.

26. For the reasons discussed above, I am of the view that the submission made by Mr. Jain has substance and must be accepted. I accordingly find and hold that Section 13(1)(b) of the Bihar Finance Act, 1981 cannot be constructed so as to put a geographical limitation on the situs of manufacture or sale of manufactured goods within the State of Bihar and it is sufficient for the purpose of that section that the purchased goods are directly used in the manufacture of goods though the manufacture might take place outside the State.

27. I accordingly set aside the impugned order dated 29.9.1995 as contained in Annexure-10 and direct the respondent authorities to restore the certificate issued in the petitioner's favour u/s 13(1)(b) of the Act.

28. In the result, this writ petition is allowed but with no order as to costs S.N. Jha, J.

29. I agree.